IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.34 OF 2006

The Commissioner of Customs ..Appellant.

V/s.

M/s.JSW Steel Ltd. ..Respondents.

Mr.R.V.Desai, senior counsel with Mr.Vijay Kanthari for appellant.

Mr.S.N.Kantawala with Yogesh Rohira for respondents.

CORAM : H.L.GOKHALE AND
J.P.DEVADHAR, JJ.

DATED : 7TH SEPTEMBER, 2006.

P.C. :-

. Heard Mr.R.V.Desai in support of this appeal. Mr.S.N.Kantawala appears for respondents. The respondent Co. is an exporter of various steel items including CRGP/CR/HR Steel Coils/Sheet notified under the Engineering Product Code 61 of DEPB Scheme Schedule. By a notification dated 28th February, 2004 the Director General Foreign Trade temporarily suspended the DEPB rates for certain steel items, which included the items which the respondents were exporting. This suspension became effective from 27th March, 2004. Subsequently, this Notification was revoked on 12th July, 2004, It was thereafter clarified on 28th July, 2004 that this revocation was

prospective.

2. Respondents learnt that some others who had exported their steel products in the meanwhile, were granted a conversion from DEPB scheme to DFRC scheme. It is the case of respondents that, therefore, they applied for a similar conversion. This request came to be turned down by the order in original passed on 20th October, 2004. Respondents carried this matter in appeal and their appeal came to be allowed by the Customs Excise & Service Tax Appellate Tribunal by its order dated 24th February, 2006. All that the Tribunal did was to note that similar conversion has been permitted to other parties. The Tribunal also noted in para 12 of this order that it was not the case of the department that the respondents did not fulfill the conditions laid down subsequently in the circular. Therefore, the Tribunal allowed the appeal and held that the requests for conversion of shipping into DFRC requires to be allowed.

3. It is this order which is sought to be challenged in this appeal.

4. Mr.Desai appearing for appellant submits that revocation of the suspension was prospective and, therefore, there was no occasion to entertain the

appeal by the Tribunal on any dispute as such. What we find is that the decision of the Tribunal is on the basis that the respondents were eligible and satisfying necessary conditions and that similar benefits was given to other parties. This is accepted in the affidavit of Mr.N.P.Tiwari, Asstt. Commissioner of Customs in reply to Writ Petition No.3603 of 2006 which is filed by the respondents to enforce this very impugned order and which petition is heard along with this appeal. In our view, there is no occasion to raise the kind of question which is sought to be raised, namely whether the CESTAT has correctly interpreted the term 'dispute' as contained in Board's Circular. The finding of the Tribunal was based on fair and equal treatment to all concerned. There is no reason to entertain this appeal.

5. Appeal is dismissed. Ad-interim order passed in appeal stands vacated.

(H.L.GOKHALE, J.)

(J.P.DEVADHAR, J.)